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BEFORE THE  
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ERNESTO GABRIEL MARTINEZ, JR.  
3019 Grand Avenue  
Walnut Park, CA 90255

Occupational Therapist License No. OT 4089

Respondent.

Case No. OT2004-35

ACCUSATION

Complainant alleges:

PARTIES

1. Heather Martin (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Occupational Therapy, Department of Consumer Affairs.

2. On or about December 10, 2002, the California Board of Occupational Therapy issued Occupational Therapist License No. OT 4089 to Ernesto Gabriel Martinez, Jr. (Respondent). The Occupational Therapy License lapsed from January 1, 2004 through January 19, 2004. The Occupational Therapist License will expire on December 31, 2006, unless renewed.

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1                   "(1) Incompetence or gross negligence in carrying out usual occupational therapy  
2 functions.

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4                   "(c) Violating or attempting to violate, directly or indirectly, or assisting in or  
5 abetting the violation of, or conspiring to violate, any provision or term of this chapter or any  
6 regulation adopted pursuant to this chapter.

7                   ....

8                   "(h) Committing any fraudulent, dishonest, or corrupt act that is substantially  
9 related to the qualifications, functions, or duties of a licensee.

10                  ....

11                  "(k) Falsifying or making grossly incorrect, grossly inconsistent, or unintelligible  
12 entries in a patient or hospital record or any other record.

13                  ....

14                  "(o) Committing any act that would be grounds for denial of a license under  
15 Section 480."

16                  7.       Section 2570.30 of the Code states:

17                  "The board shall retain jurisdiction to proceed with any investigation, action or  
18 disciplinary proceeding against a license, or to render a decision suspending or revoking a  
19 license, regardless of the expiration, lapse, or suspension of the license by operation of law, by  
20 order or decision of the board or a court of law, or by the voluntary surrender of a license by the  
21 licensee."

22                  8.       Section 2570.185 of the Code states:

23                  "An occupational therapist shall document his or her evaluation, goals, treatment  
24 plan, and summary of treatment in the patient record. Patient records shall be maintained for a  
25 period of no less than seven years following the discharge of the patient, except that the records  
26 of unemancipated minors shall be maintained at least one year after the minor has reached the  
27 age of 18 years, and not in any case less than seven years."

28                  //

1                   9.       Section 2570.26 states:

2                   "(a) The board may, after a hearing, deny, suspend, revoke, or place on probation  
3 a license, certificate, inactive license, inactive certificate, or limited permit.

4                   "(b) As used in this chapter, "license" includes a license, certificate, limited  
5 permit, or any other authorization to engage in practice regulated by this chapter.

6                   "(c) The proceedings under this section shall be conducted in accordance with  
7 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
8 Code, and the board shall have all the powers granted therein."

9                   10.       Section 125.3 of the Code provides, in pertinent part, that the Board may  
10 request the administrative law judge to direct a licensee found to have committed a violation or  
11 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
12 and enforcement of the case.

13                                   FIRST CAUSE FOR DISCIPLINE

14                                   (Falsified Hospital and Patient Records)

15                   11.       Respondent is subject to disciplinary action under section 2570.28,  
16 subdivision (k), of the Code on the grounds of unprofessional conduct in that Respondent, while  
17 employed with the Los Angeles Unified School District, Division of Special Education (LAUSD)  
18 as an occupational therapist, falsified or made grossly incorrect, grossly inconsistent, or  
19 unintelligible entries in a patient or hospital record. The circumstances are as follows:

20                   a.       On or about January 13, 2005, Respondent was assigned to work at  
21 Esperanza Elementary School. Respondent's time card indicated that he arrived at the school at  
22 7:15 a.m. The principal and another member of the staff noted that Respondent did not arrive at  
23 the school until approximately 12:00 p.m.

24                   b.       On or about July 22, 2003 and July 29, 2003, Respondent failed to sign in  
25 or out at the schools on his assignments.

26                   c.       During the period from July 18, 2003 to August 8, 2003, Respondent  
27 submitted a signed payroll time report indicating 94 hours of time. During this time period,  
28 Respondent was absent from work for 94 unexcused hours. The facts and circumstances are as

1 follows:

2 From on or about September 5, 2003 to on or about September 26, 2003,  
3 Respondent's treatment notes and Medi-Cal treatment log listed that he provided approximately  
4 64 hours and 45 minutes of services to students, as follows:

- 5 i. September 5 - 6 hours.
- 6 ii. September 9 - 3 hours.
- 7 iii. September 10 - 2 hours, 15 minutes.
- 8 iv. September 11 - 3 hours, 45 minutes.
- 9 v. September 12 - 9 hours, 45 minutes.
- 10 vi. September 17 - 4 hours, 30 minutes.
- 11 vii. September 19 - 15 hours.
- 12 viii. September 24 - 4 hours, 45 minutes.
- 13 ix. September 25 - 10 hours, 15 minutes.
- 14 x. September 26 - 5 hours, 30 minutes.

15 According to the District's records, no services were provided on September 2, 3,  
16 4, 8, 15, 22, 23, 29 and 30, 2003.

17 d. Respondent failed to provide occupational therapy treatment notes for  
18 students J. G., N. S-W. for May and June, 2003. Both students were scheduled to receive 30  
19 minutes of occupational therapy each week.

## 20 SECOND CAUSE FOR DISCIPLINE

21 (Dishonest and Fraudulent Acts)

22 12. Respondent is subject to disciplinary action under section 2570.28,  
23 subdivision (h), of the Code on the grounds of unprofessional conduct in that Respondent, while  
24 employed with the LAUSD, committed dishonest and fraudulent acts. The circumstances are as  
25 follows:

26 a. In or about September 2003, Respondent submitted a Medi-Cal billing log  
27 for treatment to students that had not been provided. Respondent over billed Medi-Cal  
28 approximately 22 hours and 30 minutes for the period from September 5, 2003 to on or about  
September 26, 2003, as follows:

1. Medi-Cal was over billed 30 minutes for student J. A. Student J. A. was  
scheduled to receive a 30-minute treatment each week. However, pursuant to the Medi-Cal  
treatment log, Respondent treated student J. A. for 30 minutes on September 5, 2003, 45 minutes

1 on September 12, 2003 and 45 minutes on September 26, 2003.

2           2. Medi-Cal was over billed two (2) hours for student Jos. A. According to  
3 Respondent's records, student Jos. A. was scheduled to receive a 30-minute treatment each week  
4 In contrast, according to OT database, student Jos. A. was to receive a 60-minute treatment each  
5 week. The Medi-Cal treatment log indicated that Respondent treated student Jos. A. for 15  
6 minutes on September 5, 2003, 45 minutes on September 9, 2003, 90 minutes on September 17,  
7 2003 and 90 minutes on September 24, 2003.

8           3. Medi-Cal was over billed 30 minutes for student H. B. Student H. B. was  
9 scheduled to receive a 39-minute treatment each week. However, the Medi-Cal treatment log  
10 indicated that Respondent treated student H. B. for 15 minutes on September 5, 2003, 45 minutes  
11 on September 9, 2003, 45 minutes on September 17, 2003 and 45 minutes on September 24,  
12 2003.

13           4. Medi-Cal was over billed one hour (1) and 45 minutes for student J. B.  
14 Student J. B. was scheduled to receive a 60-minute treatment each month. However, the Medi-  
15 Cal treatment log indicated that Respondent treated student J. B. for 15 minutes on September 5,  
16 2003, 45 minutes on September 12, 2003, 60 minutes on September 19, 2003 and 45 minutes on  
17 September 26, 2003.

18           5. Medi-Cal was over billed one hour (1) for student M. G. Student M.G. was to  
19 scheduled to receive a 60-minute treatment each month. However, the Medi-Cal treatment log  
20 indicated that Respondent treated student M.G. for 15 minutes on September 5, 2003, 60 minutes  
21 on September 19, 2003 and 45 minutes on September 25, 2003.

22           6. Medi-Cal was over billed 45 minutes for student G. F. Student G. F. was  
23 scheduled to receive a 30-minute treatment each week. However, the Medi-Cal treatment log  
24 indicated that Respondent treated student G. F. for 15 minutes on September 5, 2003, 75 minutes  
25 on September 12, 2003 and 45 minutes on September 25, 2003.

26           7. Medi-Cal was over billed one hour (1) and 15 minutes for student S. A.  
27 Student S. A. was scheduled to receive a 30-minute treatment each month. However, the Medi-  
28 Cal treatment log indicated that Respondent treated student S. A. for 60 minutes on September

1 19, 2003 and 45 minutes on September 25, 2003.

2 8. Medi-Cal was over billed 30 minutes for student O. R. According to  
3 Respondent's records, student O. R. was scheduled to receive a 30-minute treatment each week.  
4 In contrast, according to the OT database, student O. R. was scheduled to receive a 60-minute  
5 treatment each week. However, the Medi-Cal treatment log indicated that Respondent treated  
6 student O.R. was seen for 15 minutes on September 5, 2003, 45 minutes on September 12, 2003  
7 and 60 minutes on September 19, 2003.

8 9. Medi-Cal was over billed one (1) hour for student A. A. Student A. A. was  
9 scheduled to receive a 30-minute treatment each week. However, the Medi-Cal treatment log  
10 indicated that student A. A. was treated by Respondent for 30 minutes on September 5, 2003, 45  
11 minutes on September 12, 2003, 60 minutes on September 9, 2003 and 45 minutes on September  
12 26, 2003.

13 10. Medi-Cal was over billed one hour (1) and 15 minutes for student O. S.  
14 Student O. S. was scheduled to receive a 30-minute treatment each week. However, the Medi-  
15 Cal treatment log indicated that student O. S. was treated by Respondent for 15 minutes on  
16 September 5, 2003, 45 minutes on September 10, 2003, 60 minutes on September 19, 2003 and  
17 45 minutes on September 25, 2003.

18 11. Medi-Cal was over billed 30 minutes for student B. S. Student B. S. was  
19 scheduled to receive a 30-minute treatment each week. However, the Medi-Cal treatment log  
20 indicated that student B. S. was treated by Respondent for 15 minutes on September 5, 2003, 45  
21 minutes on September 10, 2003 and 60 minutes on September 19, 2003.

22 12. Medi-Cal was over billed one (1) hour 15 minutes for student C. V. Student  
23 C.V. was scheduled to receive a 30-minute treatment each week. However, the Medi-Cal  
24 treatment log indicated that student C. V. was treated by Respondent for 15 minutes on  
25 September 5, 2003, 45 minutes on September 12, 2003, 60 minutes on September 19, 2003 and  
26 45 minutes on September 25, 2003.

27 13. Medi-Cal was over billed one (1) hour 45 minutes for student D. V. Student D.  
28 V. was scheduled to receive a 60-minute treatment each month. However, the Medi-Cal

1 treatment log indicated that student D. V. was treated by Respondent for 15 minutes on  
2 September 5, 2003, 45 minutes on September 12, 2003, 60 minutes on September 19, 2003 and  
3 45 minutes on September 25, 2003.

4 14. Medi-Cal was over billed one (1) hour for student J. B. T. According to  
5 Respondent's personal records, student J. B. T. was scheduled to receive a 30-minute treatment  
6 each month. In contrast, according to the OT database, student J. B. T. was scheduled to receive  
7 a 60-minute treatment each month. However, the Medi-Cal treatment log indicated that student  
8 J. B. T. was treated by Respondent for 15 minutes on September 5, 2003, 45 minutes on  
9 September 11, 2003 and 45 minutes on September 25, 2003.

10 15. Medi-Cal was over billed 15 minutes for student G. C. Student G. C. was  
11 scheduled to receive a 30-minute treatment each month. However, the Medi-Cal treatment log  
12 indicated that student G. C. was treated for 15 minutes on September 5, 2003, 45 minutes on  
13 September 9, 2003 and 45 minutes of September 17, 2003.

14 16. Medi-Cal was over billed 30 minutes for student A. H. Student A. H. was  
15 scheduled to receive a 30-minute treatment each week. However, the Medi-Cal treatment log  
16 indicated that student A. H. was treated by Respondent for 15 minutes on September 5, 2003, 45  
17 minutes on September 9, 2003, 45 minutes on September 17, 2003 and 45 minutes on  
18 September 24, 2003.

19 17. Medi-Cal was over billed one (1) hour for student J. K. Student J. K. was  
20 scheduled to receive a 30-minute treatment each week. However, the Medi-Cal treatment log  
21 indicated that student J. K. was billed for a no show on September 5, 2003 was treated by  
22 Respondent for 45 minutes on September 12, 2003, 60 minutes on September 19, 2003 and 45  
23 minutes on September 26, 2003.

24 18. Medi-Cal was over billed 45 minutes for student A. K. Student A. K. was  
25 scheduled to receive a 30-minute treatment each week. However, the Medi-Cal treatment log  
26 indicated that student A. K. was treated by Respondent for 15 minutes on September 5, 2003, 45  
27 minutes, on September 11, 2003, 60 minutes on September 19, 2003 and 45 minutes on  
28 September 25, 2003.



1 19. Medi-Cal was over billed 45 minutes for student A. G. Student A. G. was  
2 scheduled to receive a 30-minute treatment each week. However, the Medi-Cal treatment log  
3 indicated that student A. G. was treated by Respondent for 15 minutes on September 5, 2003, 45  
4 minutes on September 11, 2003, 60 minutes on September 19, 2003 and 45 minutes on  
5 September 25, 2003.

6 20. Medi-Cal was over billed one (1) hour 30 minutes for student I. M. According  
7 to Respondent's personal records, student I. M. was scheduled to receive a 30-minute treatment  
8 each month. In contrast, according to OT database, student I.M. was scheduled to received a 60-  
9 minute treatment each month. However, the Medi-Cal treatment log indicated that student I. M.  
10 was treated by Respondent for 15 minutes on September 5, 2003, 45 minutes on September 11,  
11 2003 and 60 minutes on September 19, 2003.

12 21. Medi-Cal was over billed one (1) hour 15 minutes for student J. L. (11/1993).  
13 Student J. L. (11/1993) was scheduled to receive a 30-minute treatment each month month.  
14 However, the Medi-Cal treatment log indicated that student J. L. (11/1993) was treated by  
15 Respondent for 60 minutes on September 19, 2003 and 45 minutes on September 25, 2003.

16 22. Medi-Cal was over billed 45 minutes for student J. L. (7/1998). Student J. L.  
17 (7/1998) was scheduled to receive a 30- minute treatment each month. However, the Medi-Cal  
18 treatment log indicated that student J. L. (7/1998) was treated by Respondent for 15 minutes on  
19 September 5, 2003, 45 minutes on September 12, 2003, 60 minutes on September 19, 2003 and  
20 45 minutes on September 26, 2003.

21 23. Medi-Cal was over billed 30 minutes for student J. A. (7/1995). Student J. A.  
22 (7/1995) was scheduled to receive a 30-minute treatment each month. However, the Medi-Cal  
23 treatment log indicated that student J. A. (7/1995) was treated for 60 minutes on September 26,  
24 2003.

25 b. Respondent submitted a signed payroll time report for the period July 18,  
26 2003 to August 8, 2003, indicating 94 hours of time for which he performed no services.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 14. Respondent is subject to disciplinary action under section 2570.28 of the  
4 Code on the grounds of unprofessional conduct in that Respondent committed acts of  
5 incompetence in carrying out the functions and duties of an occupational therapist. The  
6 circumstances are as follows:

7 a. For the week of March 14, 2005 to March 18, 2005, Respondent's  
8 performance at the El Sereno ES was less than satisfactory in that he (1) failed to sign in upon  
9 arrival; (2) failed to properly communicate with school administrators; and (3) failed to use his  
10 time properly.

11 b. On or about January 23, 2005, the senior therapist noted that Respondent  
12 failed to address the second goal of the students' Individualized Education Program (IEP).  
13 Respondent failed to document this goal in the treatment plan. It was observed that Respondent  
14 continued to address various issues that were outside "the scope of practice" for a school-based  
15 occupational therapist.

16 c. The senior therapist noted that the documentation in the IEP's was  
17 inconsistent with assessment reports. In one IEP, Respondent documented that the present level  
18 of performance for a student indicated that the child was in a wheel chair. The child did not have  
19 any physical defects which would warrant a wheel chair.

20 d. On or about October 28, 2003, Respondent prepared an assessment report  
21 on student K. L. The assessment report was poorly written, incomplete and did not reflect clear  
22 clinical reasoning.

23 e. During the December 4, 2003 IEP, Respondent referred to "Brain Gym"  
24 and Respondent's treatment notes for student J. T. reflected brain-warm-up activities. This  
25 activity is not within an occupational therapist's area of expertise.

26 f. On or about October 13, 2003 and July 29, 2003, it was noted that  
27 Respondent failed to provide occupational therapy services as stipulated in the IEP and continued  
28 to address issues that were inconsistent with the students' OT IEP driven goals.

1 g. From January 1, 2004 through January 19, 2004, Respondent's license was  
2 not active as he failed to renew his Occupational Therapist License. This prevented from  
3 providing services to the students.

4 PRAYER

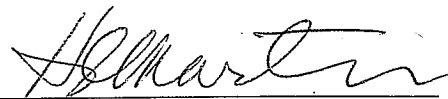
5 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
6 alleged, and that following the hearing, the California Board of Occupational Therapy issue a  
7 decision:

8 1. Revoking or suspending Occupational Therapist License No. OT 4089,  
9 issued to Ernesto Gabriel Martinez, Jr.

10 2. Ordering Ernesto Gabriel Martinez, Jr. to pay the California Board of  
11 Occupational Therapy the reasonable costs of the investigation and enforcement of this case,  
12 pursuant to Business and Professions Code section 125.3;

13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: October 31, 2006

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17 HEATHER MARTIN  
18 Executive Officer  
19 California Board of Occupational Therapy  
20 Department of Consumer Affairs  
21 State of California  
22 Complainant

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